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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,864	03/18/2004	Christine J. Bodie	015-001	6541
53961	7590	01/23/2007	EXAMINER	
FALKOWSKI PLLC			SOOHOO, TONY GLEN	
P.O. BOX 650			ART UNIT	PAPER NUMBER
NOVI, MI 48376-0650			1723	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	01/23/2007		PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/803,864	BODIE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tony G. Soohoo	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 13 November 2006.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-46 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>7-26-2004</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Election/Restrictions***

1. Upon examination of the elected claims, the restriction requirement made on 10/12/2006 is hereby withdrawn. Non-elected claims 23-46 is rejoined. Claims 1-46 is pending, and examined below.

### ***Claim interpretation***

2. Claim 1 recites an narrative operation of the positively claimed motor as a "motor configured to rotate a shaft" however fails to positively claim "a shaft" as part of the claimed elements of the invention. The claim positively claims "a wheel coupled to said shaft", but also fails to positively claim the shaft as an element in the invention. The claim states in a "wherein" clause, the operation of "[the wheel] is configured to rotate in a bearing", however does not positively point out and distinctly claim the bearing. The claim further positively points out "a container base", which in functionally "coupled to said bearing" in which the bearing is still not positively claimed as the invention.

The claim is read, for examination purposes, as best understood by the examiner, as requiring the elements of a shaft and a bearing.

3. Claims 14 and 18 points out the material or use in which the device operates upon. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). "[A]pparatus claims cover what a device *is*, not what a device *does*" (emphasis in original)

*Hewlett-Packard v. Bausch & Lomb Inc.* 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

4. Claims 21-22 recites "configured to receive power from..." the mere presence of wires upon the motor to power it is deemed as satisfying the "configured" clause. Issues of whether the power source of external or battery. Is not required in the claim since the claim does not claim and positively require a claim to an external power source or the claim to a battery.
5. Claim 23 recites "comprising: a generally vertical axis". It is noted that a vertical axis does not claim any positive structure. An "axis" can be constructed and defined anywhere as desired and does not require any physical structure. Claim 23 only requires a wheel and a base. It is further noted that the recitation of the base "supports at least one container" is narrative and does not claim the structure of "at least one container". It is noted that any base may be structurally able to hold at least one container as long there is a surface in which one may place, glue, bolt, weld, etc. a container upon that surface.
6. With regards to claim 20, the recitation of the weight of the apparatus, the "weight" is a relative term whereby the weight of the apparatus may change in different environment without a change to the structural apparatus itself, whereby when used on the moon, or the international space station, the weight of the device may alter or be near zero.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim(s) are unclear if the elements of a shaft and bearing is positively required as part of the scope applicant's invention.

Claims 3 and 4 are unclear in what particular structural element or property of the base plate "is configured" to produce the recited "configured to flex".

Claim 5-6 are narrative in operation of the device and does not claim any structural element which narrows the structural scope of the apparatus claim(s). It is unclear in what further structural element is being claimed in the narrowed structural scope of the claim.

Claims 8, 26-29 points out details to the movement of the container base / base plate. The claim is narrative to the operation of the device and does not point out any further structural element or structural limitation. It is unclear in what further physical structural element is desired in protection afforded to container base or base plate.

Claims 10 and 24 are unclear in the scope of structural connection of the retaining mechanism. It is unclear to the scope of "configured to facilitate a change" "configured to change". It is read by the examiner as best understood the mere presence of a retaining mechanism on the container base would cause a change of the

physical motion dynamics of the container base in comparison with a container base which a retaining mechanism.

Claim 12 is narrative to the motion of the container base. It is unclear in what further element is being claimed which produces the facilitation of the mixing since the container base and base plate has been already established a providing a motion. It is unclear in what structural distinction is that of claim 12 and its parent claim 1.

Claim 13 recites a negative recitation of the operative motion “do[es] not facilitate a separation of contents” and thus unclear in what positive structural element provides such an operation.

Claim 16 is directed to the noise produced by the device and does not point out any structural element. Thereby the claim is narrative and fails to point out what structure is provide to produce (or attenuate) the recited generation of noise.

Claim 17 is unclear in what structural element is made of the recited material.

Claims 30, 33-38 are narrative to the operation of the device and is unclear in what physical structure and elements and how the elements cooperate to one another to produce the recited motion and translation. Applicant has not invoked 35 USC 112, 6<sup>th</sup> paragraph.

#### ***Claim Rejections - 35 USC § 102***

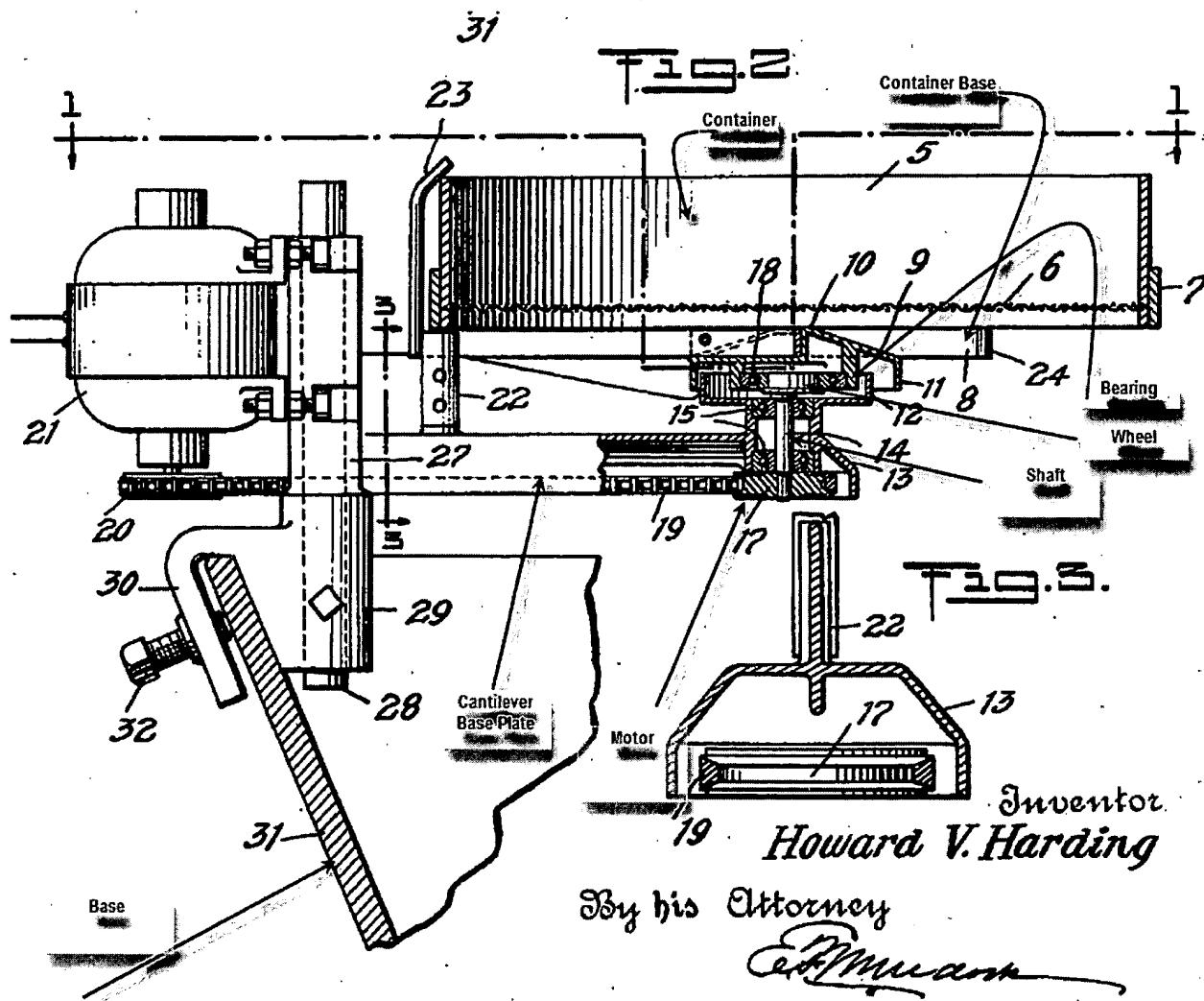
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10, 12-24, 26-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Harding 1866531.

The Harding reference discloses a base 31, a base plate 13 cantilevered at 30, motor mount and motor pulley 17, a shaft 14, a bearing 18, an eccentric wheel 16, a container base 7, 24, 10, 9, a container 5. It is noted that it is deemed that upon the rotation of the shaft, it is deemed that the container base elements and base plate would inherently have some flexure. It is noted that there is also retainer 22 provide a change in the container base element motion caused by the wheel 16 rotation. Also note that the container 5 maybe capable of holding additional containers and/or containers having nail polish or any other material if so desired. It is noted that the device may physically weigh less than 15 lbs if operated in a weightless environment. It is also noted that the power source 21 maybe connected to a external power source of a battery or line power. The device may be operated with varying electrical power thereby provide an adjustment of rotational speed. Also, the apparatus device may be operated in an environment behind a walled room with a door thereby would produce an operation that is quieter when one is 2 feet from the apparatus.



3. Claims 1-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis 3159384.

The Davis reference discloses a base 17, a base plate 15 (fig 1), cantilevered to 16, motor mount and motor 14, a shaft 18 (figure 3-7), a bearing 22, an eccentric wheel 19, a container base 34 (figure 3-7), a container 40, 41, 42 (figure 4). It is noted that it is

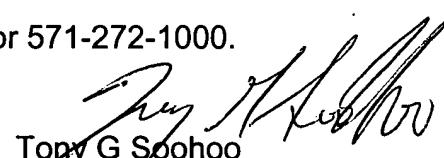
deemed that upon the rotation of the shaft 18 , it is deemed that the container base elements and base plate 15 would inherently have some flexure. It is noted that there is also retainer spring band 49, 50 provide a change in the container base element motion caused by the wheel 16 rotation. Also note that the containers maybe capable of holding nail polish or any other material if so desired. It is noted that the device may physically weigh less than 15 lbs if operated in a weightless environment. It is also noted that the power source motor 14 maybe connected to a external power source of a battery or line power. The device may be operated with varying electrical power thereby provide an adjustment of rotational speed. Also, the apparatus device may be operated in an environment behind a walled room with a door thereby would produce an operation that is quieter when one is 2 feet from the apparatus.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose vibration devices: Reynolds 4702610, and Keys 2244462.
  
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM,Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tony G. Soohoo  
Primary Examiner  
Art Unit 1723

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